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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ADAM BOSWORTH, DAVID BAU III, and
KENNETH ERIC VASILIK

Appeal 2009-009796
Application 10/089,139
Technology Center 2100

Before HOWARD B. BLANKENSHIP, ST. JOHN COURTENAY III, and CAROLYN D. THOMAS, *Administrative Patent Judges*.

COURTENAY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1-13, and 20-32, which are all the claims pending in the application. Claims 14-19 and 33-38 are cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We Affirm.

Representative Claim

1. A method of computing comprising:

reading, by an execution engine, a data processing representation having code sections with code statements of at least a first and a second programming language;

recognizing, by the execution engine, a first code section with at least code statements of a first programming language;

invoking, by the execution engine, a first code statement processing unit of the first programming language to process the first code section;

recognizing, by the execution engine, a second code section with at least code statements of a second programming language;

invoking, by the execution engine, a second code statement processing unit of the second programming language to process the second code section.

Examiner's Rejections[1]

Claims 1-3, 6, 7, 20-22, 25, and 26 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Wang (US 6,292,936).

Claims 4-5, 8, 23, 24, and 27 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Wang and Claussen (US 6,732,330).

Claims 9-13, and 28-32 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Wang and Conner (US 5,428,792).

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[1] The Final Office Action (3/22/07) contained a rejection under 112, second paragraph, which was responded to by Appellants. (App. Br. 5). The Examiner withdrew this rejection in the Answer. (Ans. 14). Therefore, the § 112 rejection is not before us.

Claim Groupings

Based on Appellants' arguments in the Appeal Brief, we will decide the appeal on the basis of claims 1, 6, 4, and 9. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Claims 1-3, 6, 7, 20-22, 25, and 26

Appellants contend that Wang fails to disclose expressly or inherently an execution engine that invokes first and second code statement processing units of first and second programming languages, as recited in claim 1. (App. Br. 7).

ISSUE

Under §102, did the Examiner err in determining that Wang discloses invoking, by the execution engine: (1) a first code statement processing unit of the first programming language to process the first code section, and (2), a second code statement processing unit of the second programming language to process the second code section, within the meaning of representative claim 1?

FINDINGS OF FACT

We rely on the findings of fact made by the Examiner in the Final Rejection and the Examiner's Answer. (Final Office Action 3; Ans. 4-5, 15-16). We add the following factual finding:

1. Wang in Figure 1 discloses a Web Daemon 108 that includes a Java Virtual Machine (JVM) 110 and a VisualBasic Script Interpreter (VBSI 112) (Fig. 1 and col. 2, ll. 49-55).

ANALYSIS

Based upon our review of the evidence, we find Appellants' arguments unpersuasive. Appellants admit that "[b]oth Wang and the invention of claim 1 certainly teach methods of processing multi-language specifications." (App. Br. 7). However, Appellants aver that according to Wang, the Java VM is invoked first at runtime, and the VB Script Interpreter is later invoked by the Java VM. (*Id.*). Thus, according to Appellants, there is no common execution engine that invokes both the Java VM and the VB Script Interpreter. (App. Br. 8).

The Examiner disagrees. The Examiner contends that Wang's system is the common execution engine that invokes the Java Virtual Machine 110 and the VisualBasic interpreter 112. (Ans. 15-16).

In reviewing the rejection of claim 1 (Ans. 4), we observe that the Examiner reads the claimed "execution engine" on Wang at column 2, lines 49-55. This portion of Wang refers to the "Web Daemon 108 that includes a Java Virtual Machine (JVM) 110 and a VisualBasic Script Interpreter (VBSI 112)" (FF 1; Wang Fig. 1). Thus, we broadly but reasonably read the claimed "execution engine" on Wang's system (Web Daemon 108 executing on the server, col. 2, ll. 41-42) that includes both the Java Virtual Machine (JVM) 110 and the VisualBasic Script Interpreter (VBSI 112).[2]

We conclude that a broad but reasonable interpretation of claim 1 does not preclude the Examiner's interpretation that the "execution engine" (Wang's Web Daemon 108) invokes a first processing unit (JVM 110),

[2] "[T]he PTO gives claims their 'broadest reasonable interpretation.'" *In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004) (quoting *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000)).

which in turn invokes the second processing unit (VBSI 112). (*See* Ans. 15). According to this interpretation, both processing units (i.e., runtime processors 110 and 112; Wang, col. 2, ll. 49-50) are invoked by an execution engine (Web Daemon 108) because the execution engine invokes the first processing unit (JVM 110) and the second processing unit (VBSI 112) is indirectly invoked by the execution engine (Web Daemon 108) via the first processing unit.

Thus, there exists a transitive causation relation between Wang's Web Daemon 108 and JVM 110 and VBSI 112, i.e., A invokes B which invokes C – therefore, A invokes C. Because "applicants may amend claims to narrow their scope, a broad construction during prosecution creates no unfairness to the applicant or patentee." *In re ICON Health and Fitness, Inc.*, 496 F.3d 1374, 1379 (Fed. Cir. 2007) (citing *In re Am. Acad. of Sci. Tech Ctr.,* 367 F.3d 1359, 1364 (Fed. Cir. 2004)). Given the aforementioned teachings in Wang and the breadth of Appellants' representative claim 1, we find the evidence supports the Examiner's position.

On this record, Appellants have not shown the Examiner erred in rejecting representative claim 1. Accordingly, we affirm the § 102 rejection of claim 1, as well as claims 2-3, 20-22, 25, and 26 (not argued separately) which fall therewith. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Claim 6

Appellants contend that Wang fails to disclose a third source of a third language or a third runtime processor. (App. Br. 9).

ISSUE

Under § 102, did the Examiner err in determining that Wang discloses recognizing a third code section and invoking a third code statement processing unit of a third programming language to process the third code section? (Claim 6).

FINDINGS OF FACT

We adopt the findings of fact made by the Examiner in the Answer. (Ans. 6-7, 16-17).

2. Wang discloses that "the present invention is not limited by specific programming languages, and could comprise languages other that HTML, Java, VisualBasic Script, for example, C, C++, Perl, Cobol, etc." (Col. 6, ll. 21-25).

ANALYSIS

In particular, Appellants contend that Wang simply teaches two runtime processors (110 and 112) invoked to process intermediate sources derived from HTML and VB Script and no disclosure is made of a third source of a third language of a third runtime processor. (App. Br. 9)

However, we agree with the Examiner that Wang discloses enabling *multiple* runtime processors and each of the runtime processors processes respective immediate sources derived from an original input source. (Ans. 16). We further agree with the Examiner that the invention is not limited to specific programming languages. (Ans. 17). See particularly FF 2 describing "HTML, Java, VisualBasic Script, . . . , C, C++, Perl, Cobol, etc."

On this record, Appellants have not shown the Examiner erred in rejecting claim 6. Therefore, we affirm the § 102 rejection of claim 6 and claim 7 (not argued separately) which falls therewith. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Claims 4, 5, 8, 23, 24, and 27

Appellants urge the patentability of these claims based on their dependency from either claim 1 or claim 20, which we have addressed above, and Appellants' arguments were not found persuasive. (App. Br. 9).

Therefore, we affirm the § 103 rejection of claims 4, 5, 8, 23, 24, and 27 for the same reasons discussed above for claims 1 and 20.

Claims 9-13 and 28-32

Appellants urge the patentability of these claims based on their dependency from either claim 1 or claim 20, which we have addressed above, and Appellants' arguments were not found persuasive. (App. Br. 9-10).

Therefore, we affirm the § 103 rejection of claims 9-13 and 28-32 for the same reasons discussed above for claims 1 and 20.

DECISION

We affirm the Examiner's § 102 rejection of claims 1-3, 6, 7, 20-22, 25, and 26.

We affirm the Examiner's § 103 rejections of claims 4, 5, 8-13, 23, 24, and 27-32.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

ORDER

AFFIRMED

pgc

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